

# **North Smithfield Zoning Board of Review**

**June 22, 2010, 7:00 p.m.**

**Kendall Dean School**

**83 Greene St., Slatersville, RI**

**The Chair called the meeting to order at 7:00 pm.**

## **1. Roll Call**

**Present: Chair Vin Marcantonio, Steven Scarpelli, Stephen Kearns, Bill Juhr, Guy Denizard, Mario DiNunzio. Absent: Paul Pasquariello. Also present were Building Official Bob Benoit, Assistant Town Solicitor Bill Savastano, and a court stenographer from Allied Court Reporters.**

**2. Disclosure of no compensation or pension credits received by the board members.**

## **3. Approval of Minutes—March 9, 2010 and April 28, 2010**

**Mr. Kearns made a motion to approve the minutes of March 9, 2010. Mr. Scarpelli seconded the motion, with all in favor.**

**Mr. Scarpelli made a motion to approve the minutes of April 28, 2010,**

**as amended. Mr. Kearns seconded the motion, with all in favor.**

**4. Approval of the written decision for the of application of Charles Desjardins (owner Patrick Regan), requesting a Special Use Permit under the provision of Section 5.4.7 (10) and a modification to condition number one from previous hearing (August 31, 2004). Locus is 1435 Victory Highway, Plat 4, Lot 4, Zoning: Highway Business.**

**Mr. Scarpelli made a motion to approve the written decision in the application of Charles Desjardins. Mr. Kearns seconded the motion, with all in favor.**

**5. Application of Robert Cook (owner: Dominic L. Pallini), requesting a Special Use Permit per sections 5.4.7, subsection 22 (filling of propane tanks), 5.4.8, subsection 6 (storage of flammable or explosive materials above ground), and 5.4.8, subsection 8 (retail outlet, storage use and the sale of related items). Locus is 141 Industrial Drive, Plat 5, Lot 475. Zoning: Manufacturing.**

**Applicant Robert C. Cook, owner of New Bedford Welding Supply, was sworn in by the court stenographer.**

**The following documents were entered as evidence:**

**E1) Photograph of a propane filling station**

**E2) Zoning application, dated May 10, 2010**

**E3) Letter, dated May 18, 2010, from Assistant Deputy State Fire Marshal Brian Gartland**

**E4) Radius Map, dated May 2010, stamped by Marc Nyberg**

**E5) List of abutters to the property**

**E6) Letter from the applicant stating his request and detailing the types of materials to be stored on the property**

**Mr. Cook stated that he is moving his business from Woonsocket to North Smithfield. He has obtained fire department and hazmat approvals, which have been submitted. He pointed out the location of the propane storage on the site map. The propane storage trailer will be locked. It is an 8' wide, 20' Conex tank, which is standard and approved by NFPA. He submitted a picture of a propane tank (E1).**

**Mr. DiNunzio asked about the location of the tank compared to the unpaved area of Comstock Road. Mr. Cook stated that he is not sure which part of Comstock Road is unpaved, but that the tank will be accessed only from the front of the property, not through the rear where Comstock Road is located.**

**Abutter Roland Legare was sworn in by the court stenographer. He is an abutter to the property (R & R Machines) and wanted to be sure that the tank is not to be installed near his property. Mr. Cook stated that the tank will be located at the far end of the building, at the west side of the property and approximately 100' away from the Mr.**

**Legare's property. He also stated, in response to Mr. Legare's question, that the existing tank is used to heat the building.**

**Mr. Cook stated that the location of the tank will comply with NFPA regulations and be approved by the state fire marshal.**

**Based on the testimony and evidence presented Board of Review makes the following findings of fact:**

- 1) Storage of acetylene and propane will be in a Conex trailer at the rear of the property.**
- 2) A concrete pad will be poured and the station will have a fence around it.**
- 3) The gases will not be stored near the abutting property.**
- 4) There is not access to the back of the property, so Comstock Road will not be impacted.**
- 5) In a letter dated May 18, 2010, Assistant Deputy State Fire Marshal Brian Gartland stated that the plan was reviewed on May 10, 2010. At that time no deficiencies or violations to the Rhode Island State Fire Code were found. Upon completion of the project a final inspection will take place.**

**Mr. Scarpelli made a motion to approve the applicant's request for a Special Use Permit per sections 5.4.7, subsection 22 (filling of propane tanks), 5.4.8, subsection 6 (storage of flammable or explosive materials above ground), and 5.4.8, subsection 8 (retail outlet, storage use and the sale of related items). Locus is 141**

**Industrial Drive, Plat 5, Lot 475, with the condition that approvals are obtained from all appropriate federal, state, and local safety agencies. Mr. Denizard seconded the motion.**

**Zoning Board roll call vote was as follows: YES: Mr. Marcantonio, Mr. Scarpelli, Mr. Denizard, Mr. Kearns, Mr. Juhr. Motion passed, with a vote of 5-0.**

**6. Application of Anchor Automotive Realty, requesting a dimensional variance from section 6.17.6 (D), height and area of free standing sign. Locus is 1041 Eddie Dowling Highway, Plat 17, Lot 142. Zoning: BH (Highway Business)**

**The following documents were entered as evidence:**

**E1) Application for a certificate of zoning compliance, dated 5-21-10**

**E2) Radius Map, dated March 2010, prepared by Marc Nyberg Associates.**

**E3) Sign plan, sheet number MBS-150.1**

**E4) Site plan, dated May 3, 2010**

**E5) Abutters List**

**E6) Planning Memo, dated June 22, 2010, prepared by Town Planner Bob Ericson**

**E7) Memo and copy of Sign Ordinance, dated June 4, 2010, prepared by Building Official Bob Benoit**

**Attorney William Bernstein addressed the Board for applicant Robert Benoit, CEO of Anchor Automotive. Mr. Benoit has recently**

**purchased a Nissan dealership, which carries with it franchise requirements for signage. He is requesting that the sign currently located at the former Smithfield Nissan dealership be transferred to his property. The sign exceeds the allowed height, and the area of the sign also exceeds regulations. Mr. Bernstein referred the Board to E3, a sign plan that details the exact dimensions of the sign. The sign will not impact sight lines, as the advertising portion of the sign is at the top. The height of the sign will add to the safety, in that customers unfamiliar with the area will be able to locate the dealership from a greater distance and prepare to slow down in time. Mr. Bernstein stated that the new business has already hired 30 employees and Mr. Benoit plans to hire 35 more. Mr. Bernstein also referred to E6, a memo from the Planning Board, which details the motion made at the June 18 meeting, recommending the variance. The memo was read into the record.**

**Mr. Scarpelli asked where the sign would be located in relation to the state DOT sign. Mr. Bernstein stated that the sign will not interfere with the state sign and pointed out on the plan the location of the sign. Mr. Bernstein also stated that they will try to get the state to move the sign, but they have jurisdiction over where they place their signs.**

**The Chair opened the meeting to the public. Two abutters were sworn in by the court stenographer: Mary Titherington and Dennis Chamberland. Both abutters had concerns with the expanding**

business and how it may impact the neighborhood of Sayles Hill Road behind the dealership. They questioned the future plans for expansion and expressed concerns with traffic problems in the area. The Board stated that they feel the concerns are valid, but that the Zoning Board has no jurisdiction over those problems. Mr. Chamberland stated that he has called the police, but has not gotten help in adding a stop sign. Mr. Scarpelli suggested that they go to the Town Council with their questions, and Mr. Juhr stated they should also put all correspondence in writing and copy the Town Administrator, the Town Council, and the Police Department.

The Chair stated that this application addresses the sign request only, and that the Board has no control over traffic signs. Mr. Juhr also suggested getting the neighbors to sign a petition for a stop sign to submit to the Town Council and request a hearing.

Mary Welsh, the attorney for Mr. Conti (who sold the Nissan dealership to Mr. Benoit), spoke in support of the application, stating that her client's funds are tied up while the sign issue is pending.

Based on the testimony and evidence presented Board of Review makes the following findings of fact:

- 1) The applicant will be moving an existing sign to the site as part of the franchise agreement with Nissan.
- 2) The sign cannot be cut down from its existing height.
- 3) The height of the sign will aid in the sighting distance for drivers

coming over the crest on the 146 southbound lanes.

4) The sight lines for traffic entering and exiting the property will not be impaired by the sign.

Mr. Scarpelli made a motion to approve the applicant's request for a dimensional variance from section 6.17.6 (D), height and area of free standing sign. Locus is 1041 Eddie Dowling Highway, Plat 17, Lot 142. Zoning: BH (Highway Business). Mr. Denizard seconded the motion.

Zoning Board roll call vote was as follows: YES: Mr. Marcantonio, Mr. Scarpelli, Mr. Denizard, Mr. Kearns, Mr. Juhr. Motion passed, with a vote of 5-0.

The Chair stated that he is recusing himself from the next application and left the meeting at 7:54. The Board took a 5-minute recess, before Vice Chair Steven Scarpelli called the meeting back to order.

7. Application of Robert J. Houle, requesting to conduct a "home occupation" in an accessory building. This will require the granting of a Special Use Permit, per section 5.6.3.8, subsection D. Locus is 355 Victory Highway, Plat 2, Lot 9, Zoning: RS-40.

The Chair recused himself from this application. Mr. DiNunzio, first alternate, voted in his place.

The following documents were entered as evidence:

E1) Application for a certificate of zoning compliance, dated 5-26-10



**E2) Letter from the applicant to Building Official Bob Benoit, dated 5-5-10**

**E3) Letter from Building Official Bob Benoit to the applicant, dated 5-12-10, stating that the request requires a Special Use Permit**

**E4) Copies of assessor's map (2 pages)**

**E5) Photos of existing shed, which the applicant would like to replace**

**E6) Abutters list**

**E7) Radius map, dated May 2010, prepared by Marc Nyberg Associates**

**E8) Letter dated 5-26-10, signed by 6 abutters in support of the applicant's request**

**B1) Planning Memo, dated 6-22-10, prepared by Town Planner Bob Ericson, stating his concerns with the applicant's request**

**Applicant Robert Houle was sworn in by the court stenographer. He is requesting to construct a 40' x 60' steel building in the back of his house. It will be used as a one-man machine shop. He stated that he has consulted the abutters and has submitted a letter of support signed by 6 of the abutters to his property. They have all been to the site and are fully aware of the proposal. Mr. Houle stated that the seventh abutter, Mr. Hassan, also approves, but was not able to sign the letter.**

**Mr. Houle stated that his business is currently located on Quaker Highway. The rent is very high for a one-man operation. He stated**

that all his business is done by phone or internet and no customers come to the site. All deliveries are made by UPS—no customers will ever visit the property. Mr. Houle stated that all work is done inside and there is not much noise. He also stated that there are no employees, although there is one former employee who may be brought back if business improves.

Mr. Kearns asked about the materials used in the shop and whether any may be hazardous. Mr. Houle stated that he uses steel, plastic, and soluble oils. There is nothing toxic and no dumping. He stated all the steel fits inside the building, so nothing will be stored outside. There will be no signage at the site, since all business is conducted over the internet. He will have spotlight off the back of the house, but no additional lighting. He stated that his house is 1200 square feet and that he lives alone. Mr. Houle also stated that his home is a small ranch located across from Halliwell School, but it is set back and won't be seen from the road. It will be 40' from one abutting neighbor and 60' from another.

Mr. Jühr referred to section 5.6.3.8 of the Zoning Ordinance and asked Mr. Benoit to explain it. Mr. Benoit stated that if the business was conducted within the dwelling, he would have to meet the requirements specified in this section of the ordinance. 5.6.3.8 (d) refers to businesses conducted from an accessory building and all such businesses require a Special Use Permit. All other subsections of 5.6.3.8 pertain to business conducted in the dwelling.

**Mr. Juhr and Mr. Denizard expressed concern that the proposed building is more than twice the size of the home on the property. Mr. Benoit stated that there is no limit on the size of an accessory building as long as setbacks are met.**

**Mr. Scarpelli stated that he doesn't have a problem with the size of the building, but asked about 5.6.3.8 (e), which states that there will be no sales in connection with the home occupation. Mr. Benoit stated that this refers to on-site sales and that the applicant testified that there will be none.**

**Mr. Juhr read 5.6.3.8 (g): "No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the senses off the lot if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises. Mr. Benoit stated that Mr. Houle has reviewed the ordinance and he stated that he can comply with this. Mr. Houle stated that all work is done inside, with no noise outside the building. He stated that he does not use a stamping machine.**

**Mr. Kearns asked about an air conditioner and related sounds, or in**

the absence of an air conditioner, would it be noisy if work was done with the doors open. Mr. Houle stated that it will be located far enough back on the property that it will not impact neighboring houses. He stated the noise level will be lower than that of a lawn mower. Mr. Kearns also asked about disposal of materials used for lubrication. Mr. Houle stated that only soluble oil is used, which is mixed with water and is not dumped. It goes into a drainage tray, then back into the machine. There is no exhaust system and no fumes.

Mr. Denizard stated that the proposed machine shop is larger than the dwelling and asked if in a RS-40 zone if this facility negates zoning regulations. Mr. Savastano stated that 5.6.3.8 (d) has a provision for it. The occupation is a machine shop, but the ordinance doesn't differentiate. Mr. Denizard stated that a machine shop is not an occupation; it's a commercial business. Mr. Jühr agreed that it is a manufacturing business. Mr. Savastano stated that since there is no definition, the ordinance is not clear.

Mr. Jühr stated that the applicant has a shed that he wants to tear down and build a larger building for a manufacturing business. He stated that regulations outlined in 5.6.3.8 (b, c, and g) are not met.

Mr. DiNunzio stated that he is torn because he would like to allow the use, but there are problems with the request. There is plenty of room on the property, but the building is very large for a one-man

operation. He stated he is concerned with the long-range implications of the Special Use Permit, in that if Mr. Houle sold the land, the next owners would not have to limit it to a one-man business. Mr. Kearns stated that 5.6.3.8 (a) states that only people living in the dwelling can work at the business. Mr. Benoit stated that if more employees were added, the property owner would have to come back before the Board to amend the Special Use Permit.

Mr. Juhre asked Mr. Houle why the building had to be so big. Mr. Houle stated that he also wants to use it to house the things that are now in his existing shed, such as bicycle, tractor, tools, etc. He stated that the current shed is in disrepair and an eyesore. It would cost a lot to repair it.

The Vice Chair opened the meeting to the public. The following abutters were sworn in by the court stenographer: Richard Guerin, Kenneth Wordell, and John Bazinet. All three support Mr. Houle's request. Mr. Guerin stated that he has been to the existing operation on Quaker Highway. He stated that there are no odors or metal shavings. He stated that he is familiar with the machines and there are modern solvents used that do not result in toxic or hazardous wastes.

He said that he is not tolerant of noise or lights, so if he wasn't confident the proposal would not impact his property, he would not be here. He stated that he has no objection whatsoever. He also added that he would object to a crew of workers, but not to a one-man operation.

**Mr. Wordell said that he also knows about lathes and bridge ports that will be used and that they do not make much noise. He stated that the building will be located far enough from the houses that he is not concerned with the noise. He stated that he and Mr. Guerin are the two closest neighbors.**

**Mr. Bazinet also stated that he has been to the existing shop and has seen nothing he would object to.**

**Mr. Kearns made reference to the Planning Memo, in which Mr. Ericson commented that 5.3.3.8 (b) makes reference to the occupation being “clearly incidental.” While Mr. Benoit stated that this refers to the dwelling unit itself, Mr. Ericson is reading it differently. Mr. Kearns stated that he does not have a lot of objection to the proposal itself, in general, with regard to the size of the building, but that he has concerns with the use. He stated that a 40’ x 60’ building is a fully-outfitted shop that could handle more employees, and in that case it is more than incidental and does not fit the home occupation criteria.**

**Mr. Juhr stated that 5.6.3.8 (a) is the least significant and that the proposal does not meet 5.6.3.8 (b, c, and g). He stated that the applicant is clearly trying to set up a manufacturing use in a residential area and he cannot support it.**

**Mr. Kearns stated that he reads this section of the ordinance as pertaining to a craft business that would not be the resident's primary means of support and that this proposed business does not fit that. Mr. Houle asked why a one-man machine shop is different than a one-man machine shop. Mr. Jühr asked why he could not set up the business in a manufacturing zone. Mr. Houle stated that this would be easier and cheaper for him. Mr. DiNunzio stated that it is hard for him to see a 40' x 60' shop as clearly incidental, and that section 5.6.3.8 also states that there should be no change to the outward appearance of the premises.**

**Mr. Kearns stated that he believes that the building can be built as an accessory building to the dwelling. He clarified that he meant that if Mr. Houle wants to build a building for storage, he can do it. Mr. Kearns is concerned with the use, as it is not a part-time occupation, but Mr. Houle's livelihood. He stated that the Board could put a condition that there be no additional workers, but he is still hesitant.**

**Based on the testimony and evidence presented, the Zoning Board of Review makes the following findings of fact:**

- 1) The applicant proposed to construct a 40' x 60' steel building to be used as a machine shop.**
- 2) Section 5.6.3.8 (b) of the North Smithfield Zoning Ordinance states, "The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes**

by its occupants, and no more than 150 square feet of the dwelling unit shall be used in the conduct of the home occupation.”

3) The proposed building would be more than double the size of the primary structure.

4) The applicant stated that he would be the only person working at the site and no customers would visit the site.

5) The applicant stated that all work will be conducted inside the building and there will be no stamping machine, therefore there will be no noise impact on abutting properties.

Mr. DiNunzio made a motion to approve the applicant’s request to conduct a “home occupation” in an accessory building. This will require the granting of a Special Use Permit, per section 5.6.3.8, subsection D. Locus is 355 Victory Highway, Plat 2, Lot 9, Zoning: RS-40. Mr. Kearns seconded the motion.

Zoning Board roll call vote was as follows: NO: Mr. Scarpelli, Mr. Denizard, Mr. Kearns, Mr. Juhr, Mr. DiNunzio. The application was denied, with a vote of 0-5.

Mr. Scarpelli made a motion to adjourn at 8:45 pm. Mr. DiNunzio seconded the motion, with all in favor.